

RESERVED WATER RIGHTS COMPACT COMMISSION



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January 10, 2011

John Carter
Rhonda Swaney
Legal Department
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

By E-mail

Dear John and Rhonda:

The Montana Reserved Water Rights Compact Commission has authorized me to transmit to you the State's formal response to the Tribes' supplemental water proposal to deplete up to 128,000 acre-feet per year of water from the mainstem of the Flathead River, backstopped by up to 90,000 acre-feet of water released from Hungry Horse Reservoir (the so-called Natural Q plus 90 scenario). After carefully reviewing the Tribes' proposal, the Bureau of Reclamation's (BoR) modeling of the potential downstream impacts of these proposed depletions, and Montana Fish Wildlife and Parks' (MFWP) modeling of the potential impacts to biota in Hungry Horse Reservoir and downstream from the Tribes' proposed operations, the State is prepared to accept the Tribes' proposal as part of a comprehensive water rights settlement with certain modifications.

The most important modification has to do with the promulgation of operational constraints that would reduce the volume of supplemental water available to the Tribes from Hungry Horse in the driest 15% of water years. As you are aware, the State and the Tribes have been working jointly for many years to secure the adoption and implementation of the Northwest Power and Conservation Council's Mainstem Amendments (also called the Montana Operations) through the development and defense of the 2008 and 2010 Supplemental Biological Opinions for the Federal Columbia River Power System. A critical component of the Mainstem Amendments/Montana Operations is a change in the timing of water releases from Hungry Horse for downstream anadromous fish needs to allow the reservoir to be better managed for local fisheries, including those of the Endangered Species Act-listed bull trout. The operational constraints that we propose serve this same goal, to prevent extreme adverse impacts to the biological productivity of the reservoir.

The details of this approach are laid out in the attached report, but in general terms, we propose a sliding scale of constraints tied to both predicted and actual in-flow and reservoir level

conditions. The first level—or “primary”—adjustment to annual water depletions can be accomplished using monthly water supply forecasts. Further “secondary” adjustments would be required to respond to inflow forecasting error (over- or under-predictions). Secondary adjustments can be fine tuned using real-time observations of water supply and actual reservoir elevations. Implementation of these adjustments can be achieved using computer simulations and “flow enveloping,” a procedure that compares forecasted inflows with observed inflows to estimate the amount of runoff expected after a given date.

It is important to bear in mind that these constraints would be triggered only in the 15% driest water years, conditions that, as demonstrated by both the BoR’s and MFWP’s modeling efforts, generally only occur in a second or successive consecutive extremely dry year. As the modeling revealed, the likelihood of these conditions actually coming to pass—and thus requiring a reduction in the volume of supplemental water available to the Tribes in a given water year—is comparatively small. Moreover, the depletion schedule modeled by BoR and MFWP was based on an agricultural irrigation demand schedule with releases from Hungry Horse coming only in July, August and September, when they would be most impactful on reservoir biota. Any reshaping of this demand schedule to move some or all of the releases out of these critical months would further reduce the chance of the proposed operational constraints being triggered. Consequently, we believe this proposed modification to the Tribes’ supplemental water proposal is respectful of the Tribes’ goal of having maximum access and flexibility to a block of supplemental water, while safeguarding from unwanted impacts in extreme water supply conditions the State’s and Tribes’ shared interest in improving Hungry Horse operations for the benefit of resident fisheries.

The second modification we seek to the Tribes’ supplemental water proposal is a recognition that 11,000 acre-feet of the Tribes’ supplemental water allocation be set aside for lease to mitigate future domestic and municipal development in western Montana. The DNRC has conducted a careful analysis of growth and development trends in the Flathead Valley and has identified this volume of water as being sufficient to mitigate the impacts of anticipated demographic changes in the region through the year 2050. The specific parameters of this mitigation arrangement (including, but not limited to, the process by which the water is credited to mitigate specific new developments and the price or mechanism for pricing of the mitigation water thus made available) would need to be negotiated in detail. But we believe the benefits to both the State and the Tribes of locking in this baseline quantity of mitigation water are significant, both in terms of allowing for reasonable growth planning into the future and in terms of facilitating a Compact’s ultimate approval by the Montana Legislature.

The State also would like a right of first refusal to match the terms and conditions of any additional blocks of the supplemental water allocation that the Tribes might seek to lease in the future. Again, the specifics of this option need to be negotiated further. But the basic idea is to afford the State (or a mitigation entity designated by the State) the opportunity to acquire access to additional water for mitigation should the Tribes choose to lease rather than develop directly portions of this supplemental water allocation.

We look forward to discussing these modifications to the Tribes' supplemental water proposal at our January negotiating session. Please do not hesitate to contact me if you have questions or would like additional information in advance of that meeting. Thank you for your consideration.

Sincerely,

Jay Weiner
Staff Attorney
Montana Reserved Water Rights
Compact Commission

Cc: Duane Mecham
David Harder